

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

<p>RANDALL DANJANOVICH, Plaintiff,</p> <p>vs.</p> <p>THOMAS ROBBINS, et al., Defendants.</p>	<p>MEMORANDUM DECISION AND ORDER DENYING DEFENDANTS' MOTION TO FILE UNTIMELY RESPONSES</p> <p>Case No. 2:04-CV-623 TS</p>
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Defendants Tek Corp., TEK Foundation, Clair W. Cox, Roger Cox, and Douglas Litster have filed a Motion seeking leave of the Court to file a number of responses and replies out of time.<sup>1</sup> In that Motion, the above-named Defendants identify six memoranda they seek to file out of time: (1) Reply Memoranda to Opposition Memoranda of Plaintiff Against Defendants' Motion to Dismiss for Lack of Standing and Lack of Subject Matter Jurisdiction; (2) Response Memorandum to Plaintiff's Motion to Strike Affidavit of Scott Alder and to Exclude Testimony

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<sup>1</sup>Docket No. 179. The Motion is styled "Motion for Leave to File Reply to Memorandum Opposing Motion to Dismiss, Memorandum in Opposition to Motion for Partial Summary Judgment, Reply to Memorandum Opposing Motion to Strike or Vacate Orders, Memorandum Opposing Motion to Strike Affidavit of Scott Alder and to Exclude Alder from Testifying at Trial and Response Memorandum Opposing Motion for Default."

of Scott Alder from Trial; (3) Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment; (4) Reply Memorandum to Plaintiff's Memorandum in Opposition to Defendants' Motion to Vacate or Stay Orders Pending Resolution of Jurisdiction Issues; (5) Memorandum in Opposition to Plaintiff's Motion for Default Judgment Against Tek Corp. and TEK Foundation; and (6) Memorandum in Opposition to Plaintiff's Motion for Order of Civil Contempt. Defendants' counsel has cited various reasons for his failure to file these memoranda in a timely fashion.

Plaintiff has opposed the Motion arguing that, when put in the context of this entire case, there is a disturbing trend of Defendants failing to comply with the Federal Rules of Civil Procedure. For the reasons discussed below, the Court will deny Defendants' Motion and will decide the pending Motions without the benefit of the responses and replies Defendants wish to file out of time and without oral argument.

These proceedings have been plagued by Defendants' continual failure to abide by the Federal Rules of Civil Procedure and the local rules, or to file memoranda in a timely fashion. At this time, the Court feels it necessary to detail these issues. On July 29, 2005, Plaintiff filed a Motion for Summary Judgment against TEK Foundation.<sup>2</sup> That Motion was largely based on admissions by TEK Foundation because of its failure to respond to requests for admissions.<sup>3</sup> Defendant TEK Foundation filed an untimely response on September 14, 2005.<sup>4</sup> Defendant TEK Foundation then filed a Motion to Amend its Responses to Plaintiff's Request for Admission on

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<sup>2</sup>Docket No. 68.

<sup>3</sup>See Docket No. 70, at 3 n.1.

<sup>4</sup>Docket No. 90.

October 17, 2005.<sup>5</sup> The Court denied Plaintiff's Motion for Summary Judgment Against TEK Foundation and permitted Defendant TEK Foundation to amend its admissions.<sup>6</sup> The Court also awarded Plaintiff \$2,100 in fees and costs because Defendant TEK Foundation had waited fourteen weeks to seek to amend its admissions.<sup>7</sup>

Thereafter, Plaintiff filed a Motion to Compel<sup>8</sup> because Defendant Tek Corp. had failed to respond to his interrogatories and requests for production. The Court granted the Motion to Compel and awarded attorneys' fees and costs because Defendant Tek Corp. again failed to respond in a timely fashion.<sup>9</sup> The Court also ordered TEK Foundation to remit the \$2,100 that the Court had previously ordered.<sup>10</sup> To date, neither amount of attorneys' fees and costs which the Court has ordered has been paid. On that same date, the Court vacated the trial setting for this case because, just before the final pretrial conference in this case, the above-named Defendants filed a Motion to Dismiss for Lack of Standing and Lack of Jurisdiction.<sup>11</sup>

The Court has previously expressed its frustration with Defendants actions, but the above-named Defendants have continually failed to follow the requirements of the Federal Rules of Civil Procedure and the local rules. Defendants' Reply Memoranda to Opposition

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<sup>5</sup>Docket No. 110.

<sup>6</sup>Docket No. 131.

<sup>7</sup>*Id.*

<sup>8</sup>Docket No. 141.

<sup>9</sup>Docket No. 151.

<sup>10</sup>*Id.*

<sup>11</sup>Docket No. 153.

Memoranda of Plaintiff Against Defendants' Motion to Dismiss for Lack of Standing and Lack of Subject Matter Jurisdiction was due on January 31, 2006.<sup>12</sup> Defendants' Response Memorandum to Plaintiff's Motion to Strike Affidavit of Scott Alder and to Exclude Testimony of Scott Alder from Trial was due by January 5, 2006.<sup>13</sup> Defendants' Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment was due by February 17, 2006.<sup>14</sup> Defendants' Reply Memorandum to Plaintiff's Memorandum in Opposition to Defendants' Motion to Vacate or Stay Orders Pending Resolution of Jurisdiction Issues was due by February 1, 2006.<sup>15</sup> Defendants' Memorandum in Opposition to Plaintiff's Motion for Default Judgment Against Tek Corp. and TEK Foundation was due by February 6, 2006.<sup>16</sup> Defendants' Memorandum in Opposition to Plaintiff's Motion for Order of Civil Contempt was also due by February 6, 2006.<sup>17</sup> Yet, none of these documents have been filed and Defendants waited until February 17, 2006, to file the present Motion.

As a result of the above-named Defendants continual failure to make timely filings and to abide by the requirements of the Federal Rules of Civil Procedure and the local rules, the Court will deny Defendants' Motion. The Court will resolve the pending Motions in this case on the

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<sup>12</sup>See DUCivR 56-1(b) ("A reply memorandum to such opposing memorandum may be filed at the discretion of the movant within ten (10) days after service of the opposing memorandum.").

<sup>13</sup>See DUCivR 7-1(b)(3).

<sup>14</sup>See DUCivR 56-1(b) ("A memorandum opposing a motion for summary judgment must be filed within thirty (30) days after service of the motion . . .").

<sup>15</sup>See DUCivR 7-1(b)(3).

<sup>16</sup>*Id.*

<sup>17</sup>*Id.*

materials that have already been presented to the Court. Additionally, the Court sees no reason to hold oral arguments on these motions.

It is therefore


ORDERED that Defendants' Motion to File Untimely Responses (Docket No. 179) is DENIED. It is further

ORDERED that the hearing set for March 22, 2006, at 3:00 p.m. is VACATED. It is further

ORDERED that Docket Nos. 153, 158, 160, 166, and 173 are TAKEN UNDER ADVISEMENT and a ruling will be issued by the Court without further briefing or oral argument.

DATED March 8, 2006.

BY THE COURT:

  
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TED STEWART  
United States District Judge